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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,957	12/07/2001	Carol J. Nikolaus	076565-0119	5680
26371	7590	08/01/2003		
FOLEY & LARDNER 777 EAST WISCONSIN AVENUE SUITE 3800 MILWAUKEE, WI 53202-5308			EXAMINER SMALLEY, JAMES N	
			ART UNIT 3727	PAPER NUMBER 9
			DATE MAILED: 08/01/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

Office Action Summary	Application No.	Applicant(s)
	10/010,957	NIKOLAUS ET AL.
	Examiner James N Smalley	Art Unit 3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 24 June 2002.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-74 is/are pending in the application.
- 4a) Of the above claim(s) 32-36 and 66-74 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-31 and 37-65 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 07 December 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-31 and 37-65, drawn to the container, classified in class 220, subclass 830.
 - II. Claims 32-36 and 66-74, drawn to the method for assembling the container, classified in class 53, subclass 396.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the container can be made by tensioning the spring in the threshold open position, as opposed to less than the threshold position, for claim 32. For method claim 66, the container can be manufactured without a locking means as enabled by claim 58.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Jason Pauls on 03 July 2003 a provisional election was made with traverse to prosecute the invention of invention I, claims 1-31 and 37-65. Affirmation of this election must be made by applicant in replying to this Office action. Claims

32-36 and 66-74 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, an embodiment showing, "three platforms," as claimed in claim 51, and, "at least two platforms with a supplemental platform," as claimed in claims 55-57, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 55-57 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

It is unclear how a supplemental platform would be added to the container. Examiner notes there aren't figures present for this embodiment, and the Specification does not enable any method of securing the supplemental platform within the base and cover.

Art Unit: 3727

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 7-8, 12-18, 19-31, 37-41, 44, 47, 52 and 63 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 7, it is unclear what is meant by “less than about 120 degrees,” since “about 120 degrees” can also include degrees that are greater than 120.

Regarding claim 8, it is unclear what is meant by “less than about 120 degrees per second,” since “about 120 degrees per second” can also include radial velocities that are greater than 120 dps.

Regarding claim 11, there is a second instance of the limitation, “a plug.”

Claim 12 recites, “...further comprising a damper assembly, wherein the damper assembly comprises a plug, wherein the damper assembly comprises a viscous fluid.” It is unclear what the damper assembly comprises.

Regarding claim 27, it is unclear what the metes and bounds of, “tacky,” comprise.

Claim 44 is dependent upon claim 46 before claim 46 is set forth.

Regarding claims 19-31, 37-41, 47 and 63, it is unclear what is meant by, “of about.” Specifically, it is unclear if degree ranges outside the bounds of 60 to 120 are included, such as a degree range from 55 degrees to 125 degrees.

Regarding claim 51, it is unclear how the container could be configured to include a third platform.

Regarding claim 52, it is unclear how the platforms can be provided as separate pieces yet be coupled together as limited by claim 42. Specifically, it is unclear if the pieces are provided as being separate before they are coupled by the hinge assembly.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Leung '085.

Leung '085 discloses a Calculator Lid Mechanism, comprising:

a hinge assembly having a spring (62) and coupling the cover (18) to the base (12) and configured for pivoting the cover from a closed position relative to the base in which the cosmetics are concealed to an opened position relative to the base in which the cosmetics are revealed,

wherein the spring is tensioned when the cover is in the closed position and the spring is at least partially relaxed when the cover is in the open position,

(cl. 2) wherein one end of the spring is coupled to the cover and the other end of the spring is coupled to the base,

(cl. 3) wherein the spring is a coil spring configured for unwinding as the cover is pivoted from the closed position to the opened position,

(cl. 4) further comprising a lock (58) for selectively releasing the cover relative to the base,

(cl. 5) further comprising a user interface (60) for disengaging the lock so that the cover automatically pivots from the closed position to the opened position,

(cl. 6) further comprising a detent coupled to at least one of the cover and the base to limit the range the cover pivots from the closed position to the open position,

(Examiner notes fig. 5, wherein it can be clearly seen the lid (18) abuts against a stop member, which is not labeled in the figures.)

(cl. 9) further comprising a plug (70) attached to one end of the spring to fix the end of the spring relative to the base,

(cl. 10) further comprising a damper assembly (70),

(cl. 11) wherein the damper assembly comprises a plug,

(cl. 12) wherein the damper assembly comprises a viscous fluid (84),

(cl. 13) wherein the viscous fluid comprises a grease (84),

(Regarding claims 12 and 13, see col. 5, line 54, wherein it is disclosed the fluid may be highly viscous oil or grease.)

(cl. 14) wherein the viscous fluid is tacky,

(cl. 15) wherein frictional engagement between the plug and the cover limits the rate at which the cover pivots relative to the base,

(Examiner notes the viscosity of the oil or grease comprises the frictional force.)

(cl. 16) wherein the spring is encapsulated in a cartridge and the cartridge is configured to rotate about the plug,

Art Unit: 3727

(Examiner notes the cartridge comprises blind bore (42).)

(cl. 17) wherein a display is revealed when the cover is in the open position,

(cl. 18) wherein the cover in the opened position is pivoted at least 60 degrees relative to the base.

Further, the initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Leung '085 which is capable of being used in the intended manner, i.e., as a compact cosmetic case (see M.P.E.P. 2111). One could provide some makeup underneath lid (18).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 19-31, 37-50, 52-54 and 58-65 rejected under 35 U.S.C. 103(a) as being unpatentable over Leung '085.

Leung '085 discloses:

a hinge assembly having a spring (62) and coupling the cover to the base and configured for pivoting the cover from a storage position to a use position relative to the base; a damper assembly (70) coupled to the hinge assembly and configured to limit pivoting of the cover;

wherein the spring is in a tensioned configuration when the cover is in the storage position and the spring is in an at least partially relaxed configuration when the cover is in the use position.

Leung '085 does not disclose:

pivoting the cover at a rate of about 60 to 120 degrees per second;

Examiner notes Leung '085 discloses, in col. 5, lines 44-56, that the damping cylinder "will slow down and counteract any tendency for rapid pivoting movement of the lid structure," to prevent rapid pivoting which could damage the internal components.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the viscosity of the fluid (84) to provide a specific angular velocity at which the case opens. One having ordinary skill would be motivated to make such a modification to prevent rapid pivoting which could damage the internal components.

Leung '085 further comprises:

(cl. 20) wherein one end of the spring is fixed relative to the base and the other end of the spring is fixed relative to the cover,

(cl. 21) wherein the spring is a coil spring configured to unwind when the cover is pivoted from the storage position to the use position,

(cl. 22) further comprising a lock (58) for selectively releasing the cover from the base,

(cl. 23) further comprising a stopper coupled to the cover to limit the range the cover pivots from the storage position to the use position,

((Examiner notes fig. 5, wherein it can be clearly seen the lid (18) abuts against a stop member, which is not labeled in the figures. This portion of lid (18) comprises the stopper.)

Art Unit: 3727

(cl. 24) wherein the damper assembly comprises a plug attached to one end of the spring to fix the spring relative to the base,

(cl. 25) wherein the damper assembly comprises a viscous fluid,

(cl. 26) wherein the viscous fluid comprises a grease,

(cl. 27) wherein the viscous fluid is tacky,

(cl. 28) wherein frictional engagement between the plug and the cover limits the rate at which the cover pivots relative to the base,

(cl. 29) further comprising a cartridge coupled to the damper assembly ,

(cl. 30) wherein the spring is encapsulated in a cartridge,

(cl. 31) wherein the cartridge is configured to rotate about the plug.

(Examiner notes the cartridge comprises blind bore (42), which encapsulates the spring (62) and which rotates about the plug (70).)

Regarding claims 37-41, Leung '085 discloses:

hinge means (70) for coupling the first platform and a second platform and for automatically pivoting the first platform from a storage position to a use position relative to the second platform;

damper means (84) for limiting pivoting of the first platform;

wherein the first platform in the storage position conceals the cosmetics and the first platform in the use position reveals the cosmetics.

Leung '085 does not disclose wherein the damper limits pivoting at a rate of 60 to 120 degrees per second.

Art Unit: 3727

Examiner notes Leung '085 discloses, in col. 5, lines 44-56, that the damping cylinder, "will slow down and counteract any tendency for rapid pivoting movement of the lid structure," to prevent rapid pivoting which could damage the internal components.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the viscosity of the fluid (84) to provide a specific angular velocity at which the case opens. One having ordinary skill would be motivated to make such a modification to prevent rapid pivoting which could damage the internal components.

Further regarding claims 38-41, Leung '085 discloses:

(cl. 38) wherein the hinge means comprises a spring (62),

(cl. 39) wherein the spring is in a tensioned configuration when the first platform is in the storage position and the spring is in an at least partially relaxed configuration when the first platform is in the use position,

(cl. 40) wherein the damper means comprises a plug (70);

(cl. 41) wherein the damper means comprises a viscous fluid.

Regarding claims 42-46, Leung '085 discloses:

at least two platforms (12, 18);

a hinge assembly (70) coupling at least two platforms and configured for automatically pivoting the at least two platforms from a storage position to a use position;

wherein the hinge assembly includes a biasing means,

(cl. 43) wherein the biasing means comprises a spring (62),

Art Unit: 3727

(cl. 44) wherein the spring is tensioned when the at least two platforms are in the storage position and the spring is at least partially relaxed when the at least two platforms are in the use position,

(cl. 45) wherein the hinge assembly includes a damper (84) to limit the rate of pivoting of the at least two platforms from the storage position to the use position,

(cl. 46) wherein the damper comprises a viscous fluid.

Regarding claim 47, Leung '085 does not disclose wherein the damper limits pivoting at a rate of 60 to 120 degrees per second.

Examiner notes Leung '085 discloses, in col. 5, lines 44-56, that the damping cylinder, "will slow down and counteract any tendency for rapid pivoting movement of the lid structure," to prevent rapid pivoting which could damage the internal components.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the viscosity of the fluid (84) to provide a specific angular velocity at which the case opens. One having ordinary skill would be motivated to make such a modification to prevent rapid pivoting which could damage the internal components.

Further regarding claims 48-50 and 52, Leung '085 discloses:

a locking assembly (58) to selectively maintain the at least two platforms in the storage position,

(cl. 49) wherein the cosmetics may be accessed when the at least two platforms are in the use position,

(cl. 50) comprising two platforms (12, 18),

(cl. 52) wherein the at least two platforms are provided as separate pieces.

Regarding claim 58, Leung '085 discloses:

hinge means (70) for coupling the first platform and a second platform and for automatically pivoting the first platform from a storage position to a use position relative to the second platform; and

damper means (84) for limiting pivoting of the first platform to the use position,
(cl. 53) further comprising a locking means (58) for selectively maintaining the first platform in the storage position,
(cl. 54) wherein the first platform and the second platform are provided as separate pieces.

Regarding claims 58-62, Leung '085 discloses:

hinge means (70) for coupling the first platform and a second platform and for automatically pivoting the first platform from a storage position to a use position relative to the second platform; and

damper means (84) for limiting pivoting of the first platform to the use position.
(cl. 59) wherein the hinge means includes a spring (62),
(cl. 60) wherein the spring is tensioned when the at least two platforms are in the storage position and the spring is at least partially relaxed when the at least two platforms are in the use position,

(cl. 61) wherein the damper means (84) comprises a viscous fluid,
(cl. 62) wherein the damper comprises a plug.

Regarding claim 63, Leung '085 does not disclose wherein the damper limits pivoting at a rate of 60 to 120 degrees per second.

Art Unit: 3727

Examiner notes Leung '085 discloses, in col. 5, lines 44-56, that the damping cylinder, "will slow down and counteract any tendency for rapid pivoting movement of the lid structure," to prevent rapid pivoting which could damage the internal components.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the viscosity of the fluid (84) to provide a specific angular velocity at which the case opens. One having ordinary skill would be motivated to make such a modification to prevent rapid pivoting which could damage the internal components.

Further regarding claims 64-65, Leung '085 discloses:

a locking assembly (58) to selectively maintain the at least two platforms in the storage position,

(cl. 65) wherein the cosmetics may be accessed when the at least two platforms are in the use position.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US 6,336,252	US 5,040,268
US 5,651,536	US 5,033,162
US 5,636,275	US 3,628,217
US 5,520,313	US 3,136,445
US 5,211,269	

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, email CustomerService3700@uspto.gov .

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 8-5:30, Alternate Fri 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Other helpful telephone numbers are listed for applicant's benefit.

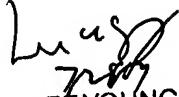
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Art Unit: 3727

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jns
July 14, 2003


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